

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	EB Docket No. 03-152
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNKS, Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES, INC.)	Facility ID No. 3365
)	
Permittee of FM Station KAAX, Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL SERVICES, INC.)	Facility ID No. 9993
)	
Permittee of FM Station KYAF, Firebaugh, California)	
)	
H. L. CHARLES D/B/A FORD CITY BROADCASTING)	Facility ID No. 22030
)	
Permittee of FM Station KZPE, Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY BROADCASTING)	Facility ID No. 37725
)	
Licensee of FM Station KZPO, Lindsay, California)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S OPPOSITION TO
MR. ZAWILA'S REQUEST TO APPEAL *ORDER*, FCC 16M-02**

1. On February 2, 2016, the Presiding Judge issued *Order*, FCC 16M-02, adding six ordering clauses to the proceeding that are, in part, directed at resolving the question of whether William L. Zawila has been and is authorized to serve as counsel for, or otherwise represent, Central Valley Educational Services, Inc. (Central Valley) and Avenal Educational Services, Inc. (Avenal).¹ On February 5, 2016, Mr. Zawila (on behalf of himself) – and Central Valley, Avenal, The Estate of Linda Ware d/b/a Lindsay Broadcasting, and The Estate of H.L. Charles d/b/a Ford City Broadcasting (whom Mr. Zawila purportedly represents) – filed a request under Section 1.301(b) of the Commission's rules to appeal *Order*, FCC 16M-02.² On February 19, 2016, the Presiding Judge requested that the Enforcement Bureau (Bureau) respond to the Request.³ For the reasons discussed below, the Chief, Enforcement Bureau, through his attorneys, respectfully opposes the Request.

2. As an initial matter, none of the additional ordering clauses in *Order*, FCC 16M-02, pertain to The Estate of Linda Ware d/b/a Lindsay Broadcasting or to The Estate of H.L. Charles d/b/a Ford City Broadcasting. Therefore, to the extent that Mr. Zawila argues in the Request on their behalf, these parties have no basis for requesting an interlocutory appeal. Their Request should be denied.

3. To the extent that Mr. Zawila argues in the Request on behalf of Avenal and Central Valley, there has been no determination that the Avenal and Central Valley entities represented by Mr. Zawila are in fact the permittees named in this proceeding. Indeed, the

¹ See *Order*, FCC 16M-02 (ALJ, rel. Feb. 2, 2016).

² See Request to Appeal 2-2-2016 Order (16M-02), filed Feb. 5, 2016 (Request).

³ See Email from Presiding Judge to the Parties, EB Docket No. 03-152, dated Feb. 19, 2016.

Presiding Judge has repeatedly recognized that there remain substantial questions of fact concerning the ownership and control of these companies that must be resolved before this case can proceed.⁴ Moreover, the Presiding Judge has recognized that discovery is necessary before any such determination can be made.⁵ Neither Avenal nor Central Valley (as represented by either Mr. Zawila or Mr. Couzens) has responded to any of the Bureau's discovery requests directed to this question. In fact, Avenal and Central Valley (as represented by Mr. Couzens) recently filed a motion requesting protection from having to respond to any of the Bureau's discovery requests and a stay of all discovery – which Mr. Zawila later joined on behalf of Avenal, Central Valley and the rest of his clients.⁶ Thus, the question of who owns and controls Avenal and Central Valley, and who in fact properly represents them in this hearing, remains unsettled. As a result, it is unclear that Mr. Zawila has the authority to act on behalf of Avenal and Central Valley in making the instant Request. For this reason alone, the Request should not be granted as to Avenal and Central Valley.

4. Moreover, this Request should be denied on substantive grounds. Section 1.301(b) of the Commission's rules requires that a request to file an interlocutory appeal "contain a showing that the appeal presents a *new or novel question of law or policy* and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception."⁷ The instant Request, however, makes no such showing. Instead, the Request

⁴ See, e.g., *Order*, FCC 15M-21 (ALJ, rel. June 4, 2015) at 3; *Memorandum Opinion & Order*, FCC 16M-01, (ALJ, rel. Jan. 12, 2016), at 2, §§ 3-4.

⁵ See, e.g., *Order*, FCC 16M-01, at 5 (ordering discovery to commence).

⁶ See Motion for Protective Order (47 C.F.R. Sec. 1.313), filed Feb. 8, 2016. The Bureau opposed this motion. See Enforcement Bureau's Opposition to Motion for Protective Order, filed Feb. 11, 2016. Avenal and Central Valley (as represented by Mr. Zawila) subsequently filed a joinder to this motion for protection. See Joinder in Motion for Protective Order (47 C.F.R. § 1.313), filed Feb. 20, 2016.

⁷ 47 C.F.R. § 1.301(b) (emphasis added).

vaguely, and almost entirely without legal support or citation to the record, raises three arguments that do not rise to the “new and novel” standard in Section 1.301(b), will be disposed of in the ordinary course of the hearing process, and are not likely to result in a remand.

5. First, the Request asserts that *Order*, FCC 16M-02, violates some Commission policy by inquiring into matters of alleged misconduct more than ten years ago.⁸ Indeed, the Request goes so far as to suggest that the Presiding Officer “lacks authority to make findings or conclusions on matters that go back more than ten (10) years.”⁹ In support of these assertions, Mr. Zawila cites only to the Commission’s *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement* (Commission’s 1986 Character Policy).¹⁰ However, the Commission’s 1986 Character Policy contains no such limitation. Rather, it suggests only that, *as a general matter*, the Commission should impose a 10-year limitation when considering past conduct in the context of examining an applicant’s (or, in this case, a permittee’s) character.¹¹ The Commission retains the discretion to investigate and consider conduct that occurred beyond that time period if the circumstances warrant.¹²

6. Here, the only reason the issues in the Order To Show Cause, Notice of Opportunity For Hearing, and Hearing Designation Order (HDO)¹³ have not yet been fully

⁸ See Request at 2-4.

⁹ *Id.* at 2.

¹⁰ See *id.*

¹¹ See *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC 2d 1179, 1229 (1986) (emphasis added).

¹² In the Commission’s 1990 *Policy Statement and Order* concerning character qualifications, it modified certain of the policies it enunciated in the Commission’s 1986 Character Policy, including allowing the Commission to consider evidence of any conviction for misconduct involving a felony, regardless of when the conduct occurred. See *Policy Statement and Order*, 5 FCC Rcd 3252 (1990); see also *Titus*, 29 FCC Rcd 14066, 14071 (2014) (concluding that the Commission could consider convictions that occurred more than ten years before the Order to Show Cause).

¹³ See *In re Zawila*, Order To Show Cause, Notice of Opportunity For Hearing, and Hearing Designation Order, 18 FCC Rcd 14938 (Jul. 16, 2003).

prosecuted is because, **at the request of Mr. Zawila, Avenal, and Central Valley (and the other parties to the proceeding purportedly represented by Mr. Zawila)**, Administrative Law Judge Steinberg stayed the proceeding in September 2003 and again, indefinitely, in March 2004.¹⁴ This stay was not lifted until the Presiding Judge's recent *Order*, FCC 15M-21, after which time the Bureau promptly re-commenced prosecution of the case.¹⁵ The parties should not be permitted to now use a delay that was precipitated by their own actions as a shield against responding to viable allegations. On this basis alone, the Request should be denied.

7. Second, the Request asserts that *Order*, FCC 16M-02, seeks to “resurrect and revisit matters” concerning Avenal and Central Valley’s qualifications to apply for construction permits for noncommercial educational stations that were previously resolved by the Media Bureau.¹⁶ However, the Request does not present any citation or reference to a previous Commission rule or order that has “fully adjudicated” this – or any other matter – set forth in the ordering clauses of *Order*, FCC 16M-02. As such, this argument, too, offers no basis for an interlocutory appeal.

8. Third, the Request appears to suggest that *Order*, FCC 16M-02, is improper because it “seeks to invade the attorney-client relationship, the attorney-client privilege, and the attorney work product privilege” because it “essentially” directs Mr. Zawila to violate his attorney-client relationship with regard to Avenal and Central Valley.¹⁷ Not only does the Request fail to identify those portions of the *Order* which purportedly seek to investigate confidential matters between Mr. Zawila and his clients, but it also fails to offer any legal

¹⁴ See *Order*, FCC 03M-39 (ALJ, rel. Sept. 12, 2003); *Order*, FCC 04M-09 (ALJ, rel. Mar. 5, 2004).

¹⁵ See *Order*, FCC 15M-21, at 2.

¹⁶ See Request at 4.

¹⁷ *Id.* at 4.

argument or citation in support of this assertion. As noted above, there remains a question of fact as to whether the Avenal and Central Valley entities Mr. Zawila purports to represent are in fact the permittees named as parties in this matter and if so, whether he is their proper legal representative. The issues added by *Order*, FCC 16M-02, seek only to establish whether Mr. Zawila “was authorized to serve as counsel for, or otherwise represent” Avenal and Central Valley at the time of the actions set forth in the HDO and during this proceeding.¹⁸ The fact of whether Mr. Zawila was (and is still) counsel to these parties does not improperly seek privileged attorney-client information. Accordingly, this argument also fails to present any basis for an appeal.

9. Finally, the Bureau notes that Avenal and Central Valley, as purportedly represented by Mr. Zawila, failed to respond to any of the Bureau’s outstanding discovery requests on, among other things, the very question of whether Mr. Zawila is their counsel/authorized representative, necessitating a motion to compel from the Bureau.¹⁹ To the extent that the instant Request is a veiled opposition to the Bureau’s pending motion to compel, it should likewise be denied as baseless.

Conclusion

10. For the reasons stated above, the Bureau respectfully requests that the Presiding Judge deny the instant Request.

¹⁸ *Order*, FCC 16M-02, at Additional Ordering Clauses 1 and 2.

¹⁹ See Enforcement Bureau’s Motion To Compel Avenal Educational Services, Inc. and Central Valley Educational Services, Inc. to Provide Complete Responses to Outstanding Discovery Requests, filed Feb. 17, 2016.

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau

A handwritten signature in dark ink, appearing to read "Pamela S. Kane", written over a horizontal line.

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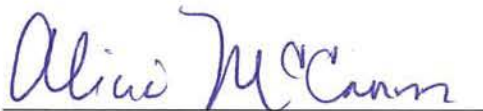
CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 24th day of February, 2016, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO MR. ZAWILA'S REQUEST TO APPEAL *ORDER*, FCC 16M-02" to:

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